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Before the
Federal Communications Commission
Washington, D.C. 20554

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In re Applications of)	MM Docket No. 93-241
)	
DARRELL BRYAN)	File No. BPH-920109MA
)	
SBH PROPERTIES, INC.)	File No. BPH-920123MD
)	
)	

For Construction Permit for
New FM Channel 276A
Tusculum, Tennessee

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FEB 24 1994

To: Honorable John M. Frysiak
Administrative Law Judge

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REPLY TO
OPPOSITION TO REQUEST FOR RULING

SBH Properties, Inc. ("SBH") by counsel herewith submits its Reply to the Opposition to Request for Ruling, filed by Darrell Bryan ("Bryan") on February 18, 1994. In support whereof the following is shown:

1. In its Request for Ruling, filed February 14, 1994, SBH demonstrated that Bryan did not produce any documents relating to his civic activities in response to the Standard Document Production, which pursuant to Section 1.325(c)(1)(x) requires the production of "Representative documents relating to enhancement credits and preferences sought by the applicant's principals for local residence, civic participation, past broadcast experience, minority status and the like." In response to SBH's Initial Supplemental Document Request, which called for production of all documents evidencing the nature and extent of Bryan's involvement

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in civic activities, Bryan again produced no documents. Instead, he claimed that: "Representative documents concerning the nature and extent of Mr. Bryan's participation in civic and community activities have already been produced," despite the no such documents had been produced in response to the Standard Document Production. At his deposition Bryan confirmed that the responses contained in his counsel's December 6, 1993, letter were true and correct and that he had been provided a copy of each of SBH's document requests and had been specifically requested by his counsel to search his files and provide copies of any responsive documents. (Depos. 71) Finally, SBH demonstrated that at his deposition Bryan acknowledged that almost without exception he did in fact have documents which would substantiate his involvement in his claimed civic activities. Yet, none of these documents had ever produced.

2. In his Opposition, Bryan does not dispute his failure to produce even a single document relating to his civic activities. Instead, Bryan argues that the only documents he has consist of "plaques" and "framed certificates," which he was advised by counsel not to produce. While Bryan contends that his deposition testimony is consistent with this claim, it cannot be so reconciled. Indeed, contrary to Bryan's contentions, his own summarization of his deposition testimony (Opposition, Attachment A) establishes that he confirmed the existence of documents with respect to the following activities: Keep Greene Clean Committee (has a certificate), Greene County Chamber of Commerce Board of

Directors (has several plaques), Greene County Chamber of Commerce President (has a plaque and other documents), Greene County Fall Fest (has documents, newspaper articles, etc.), March of Dimes (has a certificate), Vocational Technical School (has documents), Greene County YMCA Board (has documents), Junior Achievement (has several plaques) and Tusculum College Pioneer Club (has documents or plaques). In addition, although Bryan's summarization omits these activities, his deposition testimony also confirms that he also has documents relating to his activities with the Greene County Jaycees (has documents) and a local Little League Baseball Team (has documents). (Depos. 50)

3. Bryan has also failed to offer any explanation of his response to SBH's Initial Supplemental Document Request (i.e., that documents relating to his civic participation had been produced) or any explanation of those portions of his deposition testimony which indicate that he does in fact have documents other than plaques and "framed certificates." In addition, other than indicating that he was advised by counsel "that he was not required to attempt to make copies of plaques or framed certificates," Bryan has offered no justification for his failure to produce the plaques and framed certificates, which he acknowledges in his Opposition remain in his possession. Finally, Bryan has failed to offer any justification for his failure to identify documents which were previously, but are no longer within his possession, despite the instructions to SBH's Initial Supplemental Document Request, which explicitly provide for the

identification and disclosure of the current status of any documents which no longer exist or are no longer within his possession .

4. Whether Bryan was concerned with creating a paper trail is irrelevant. What is highly relevant is the fact that Bryan acknowledged at his deposition that he does in fact have documents which he was required to produce, substantiating his involvement in almost all of the civic activities for which he receives credit, yet, he has failed to produce a single document. Furthermore, his argument that he has only plaques and framed certificates is not only inconsistent with his deposition testimony, but fails to explain his failure to produce copies of even these documents, which he he does not dispute having in his possession. Likewise, whether Bryan's obstruction of discovery impeded questioning at his deposition or whether his listing is inaccurate or are subject to challenge are considerations which cannot be determined in light of his failure to comply with his obligation to produce the documents production obligations and are in any event irrelevant to whether Bryan is guilty of obstruction and abuse of discovery.

Respectfully Submitted,

SBH PROPERTIES, INC.

By 

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February 24, 1994

1 say maybe six or eight meetings.

2 Q I don't know if I asked you about Junior
3 Achievement. Do you have plaques on Junior Achievement?

4 A I have plaques, yes.

5 Q What about the Pioneer Club?

6 A Yes.

7 Q And then the last item on page seven is re-
8 garding the civic activities. Well, there are two items there.
9 In terms of Little League, do you have any documents that would

10

11 A Yes, I do.

12 Q ... substantiate that? I guess I should
13 finish the question.

14 A I'm sorry.

15 Q That's okay. What about the Jaycees, Greene
16 County Jaycees?

17 A Yes.

18 Q It doesn't indicate that you held with the
19 Jaycees any kind of office.

20 A I tried not to.

21 Q Okay. Moving on down to the next section re-
22 garding broadcast experience, on page seven you list two stations
23 that you worked at as an announcer: WEZK in Knoxville and WSKT.

24 A Right.

25 A Do you have any old business cards or other

1 A Right.

2 Q Are there any documents other than the two
3 bank letters that we've looked at earlier that relate to any
4 source of funding?

5 A No.

6 Q There was no correspondence with any other
7 banks?

8 A No, I went straight to Greene County Bank.
9 That's the only one I went to.

10 MR. CARR: Mr. Brady, I thought I might state for the
11 record, I have this fax where I sent him document descriptions
12 on November 29, 1993. You did ask the question, did he get this
13 list, this attachment (a) list of

14 MR. BRADY: Right. That's the actual request then that
15 you faxed to him?

16 MR. CARR: Yes, I actually faxed him the list of docu-
17 ments with a letter in which I said, "Review each category
18 description and search your files to see if there are any re-
19 sponsive documents. The documents must be given to SBH counsel
20 within ten days." You had raised the question whether he had
21 gotten it.

22 MR. BRADY: Right. Sure. That's good. Thanks very
23 much.

24 Q Looking at Item 19, it requests for documents
25 relating to costs that would identify payments relating to costs

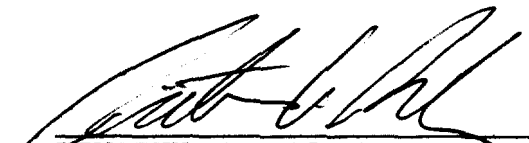
CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have this 2nd day of February, 1994, served a copy of the foregoing Reply to Opposition to Request for Ruling by First Class mail, postage prepaid upon the following:

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